

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

In re Case No. 08-13656-A-7
DEBORAH JANE MORROW DC No. PK-4

Debtor.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW
RE TRUSTEE'S AMENDED OBJECTIONS TO DEBTOR'S
AMENDED CLAIM OF EXEMPTIONS**

A hearing was held November 18, 2009, on the amended objections of the chapter 7 trustee to debtor's amended claim of exemptions. Following the hearing, the court took the matter under submission. This memorandum contains findings of fact and conclusions of law required by Federal Rule of Bankruptcy Procedure 7052 and Federal Rule of Civil Procedure 52. This is a core proceeding as defined in 28 U.S.C. §157(b)(2)(B).

As the chapter 7 trustee relates in his objection, this case was filed June 24, 2008, as a chapter 7 case. The debtor then sought to convert her case to chapter 13. Prior to that, she had received her discharge, on October 21, 2008. An order granting her motion to convert the case to chapter 13 was entered January 6, 2009. An amended order was entered March 19, 2009. On April 7, 2009, an order dismissing the case was entered. On May 11,

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1 2009, an order was entered vacating the order dismissing the case
2 and ordering that the chapter 13 case be reconverted to chapter
3 7.

4 The history of the exemptions claimed and the trustee's
5 objections mirrors the procedural history of the case as a whole.
6 While the case was originally in chapter 7, the trustee objected
7 to a claim of exemption which was sustained. That objection was
8 to the claim of exemption in the Springdale trailer. Following
9 that, the case was converted to chapter 13 on the debtor's
10 request.

11 On November 24, 2008, the debtor filed an amended Schedule
12 C. That amended Schedule C also claim an exemption for the
13 Springdale trailer and the lot on which it is located. The
14 trustee timely filed an objection on December 24, 2008. However,
15 the trustee did not set that objection for hearing, and the order
16 converting the case to chapter 13 was entered in January 2009.
17 The hearing on November 18, 2009, was as to the objection filed
18 December 24, 2008. Therefore, the objection was timely filed.

19 The trustee now objects to the debtor's claim of exemption
20 in the 2008 Springdale trailer on different grounds from his
21 first objection which the court sustained, and after which an
22 amended Schedule C was filed. According to the trustee, the lien
23 of the PSE Credit Union ("PSECU") on the trailer is avoidable
24 because it is an unperfected security interest. The trustee
25 asserts that he can avoid the lien under Bankruptcy Code § 544
26 and § 551 and that once avoided, the lien is preserved for the
27 benefit of the estate. The trustee also asserts that under
28 Bankruptcy Code § 522(g)(1)(A), the debtor cannot exempt the

1 value of the lien that the trustee recovered. All the debtor can
2 exempt is the equity that may exist above the amount of the
3 recovered lien. According to the trustee, there is no equity.
4 The trustee also objects to the debtor's claims of exemption in
5 that they exceed the "wild card" amount under California Code of
6 Civil Procedure § 703.140.

7 The debtor opposes the objection on several grounds. First,
8 she says the trustee has delayed far too long in filing the
9 motion objecting to her claims of exemption and thus should be
10 barred from proceeding now. At the same time, she asks for a
11 continuance so she can obtain a lawyer. She suggests that the
12 trustee sell the "vacant land" instead of the trailer.

13 The debtor states in her opposition that the residence on
14 the property where the trailer is located cannot be occupied by
15 her and her family now because they can not afford to pay for
16 heat. Therefore, they are living in the trailer. She asserts
17 that if the trustee were to sell the trailer, it would cause her
18 family hardship. Additionally, the debtor states that she wishes
19 to negotiate with the credit union about the trailer.

20 In the bankruptcy case as filed, the debtor showed her
21 residence as in California. Therefore, it is appropriate that
22 she claim exemptions under California law. In objecting to a
23 claim of exemption, the trustee has the burden of proof. Federal
24 Rule of Bankruptcy Procedure 4003(c) states that "the objecting
25 party has the burden of proving that the exemptions are not
26 properly claimed."

27 Here, the evidence before the court consists of the
28 trustee's request for judicial notice of Claim No. 5 filed by the

1 PSECU. The claim is filed as an unsecured claim. The court also
2 takes judicial notice of other documents that are part of the
3 record of the case.

4 On November 4, 2009, just prior to the hearing on the
5 objection, the debtor filed a new amended Schedule C. In the new
6 amended Schedule C, she utilized exemptions under California Code
7 of Civil Procedure § 704.730 instead of exemptions under §
8 703.140. At the hearing, the trustee asked the court to sustain
9 his objections to the exemptions claimed in the November 4th
10 filing and to rule on the claim of exemption in the Springdale
11 trailer.

12 When the debtor filed her chapter 7 petition, she stated
13 that her residence was in California. On Schedule A filed with
14 the petition, she stated that she resided in a trailer on land at
15 17730 Bold Venture Drive, Tehachapi, California. She also listed
16 on A property at 2113 Main Street, Shade Gap, Pennsylvania,
17 describing it as a "90 year old farmhouse needing repairs to
18 dwell." In Schedule C filed with the petition, she listed as
19 exempt the real property in Pennsylvania, a 2004 Mercury Sable,
20 and 2003 Ford Expedition, and 2008 Springdale trailer, and the
21 real property in Tehachapi. The exemptions were claimed under
22 California Code of Civil Procedure 704 without any more specific
23 statutory reference.

24 Amended Schedule C filed on November 24, 2008, claims an
25 exemption in the "1.10 acre lot and in the 2008 Springdale
26 trailer" under CCP § 703.140(3)(b)(1).

27 Finally, on November 4, 2009, the debtor filed an Amended
28 Schedule C claiming only the Springdale trailer and the property

1 in Pennsylvania as exempt, this time again using California Code
2 of Civil Procedure § 704 but including the statutory reference of
3 § 704.730(a)(2).

4 The debtor has stated that when she filed her bankruptcy
5 petition, she resided on the property in California. The only
6 homestead exemption that she could claim using the exemptions
7 provided by California Code of Civil Procedure § 704 for a
8 homestead would be the real property on which she resided at the
9 time the case was filed. Therefore, amended Schedule C filed
10 November 4, 2009, utilizing California Code of Civil Procedure
11 § 704.730 does not list allowable exemptions.

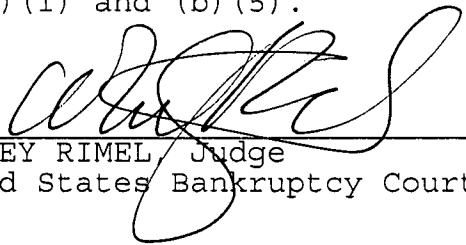
12 The amended Schedule C filed by debtor November 24, 2008,
13 appropriately utilizes § 703.140(3)(b)(1) and (b)(5).

14 The trustee asserts that the objection to the claim of
15 exemption in the trailer should be sustained because he can avoid
16 the security interest of the credit union in the trailer. The
17 problem with this argument is that it is not clear that there is
18 anything at all to avoid. The credit union has filed a proof of
19 claim showing an unsecured claim. The debtor originally
20 scheduled the credit union as a secured creditor, but she amended
21 the schedules on November 24, 2008, to delete the reference to
22 the credit union as having a secured claim on the trailer.
23 Therefore, the credit union has acknowledged in filing its
24 unsecured proof of claim that it does not have a security
25 interest in the trailer, and the debtor has acknowledged by
26 filing an amended Schedule B that she does not believe the credit
27 union has a secured interest in the trailer. The trustee has not
28 met his burden of proof with respect to the trustee's ability to

1 avoid any security interest in the trailer for the reason that
2 there does not appear to be any claim of a security interest in
3 the trailer. Thus, the trustee's objection is overruled on that
4 ground.

5 The second ground of the trustee's objection is that the
6 amended Schedule C filed November 24, 2008, attaches a value of
7 \$18,350 to both the claim of exemption in the 1.1 acre lot on
8 which the trailer is situated and also for the trailer. Thus,
9 while the debtor is only entitled to an aggregate exemption of
10 the amount specified by CCP § 703.140(b)(1) and (b)(5), the
11 debtor has doubled the amount she may claim exempt. To this
12 extent, the objection is sustained. The debtor is limited to a
13 total exemption of \$21,825.00 in the 1.1 acre lot on which the
14 trailer sits and in the 2008 Springdale trailer under California
15 Code of Civil Procedure § 703.140(b)(1) and (b)(5).

16 DATED: December 9, 2009

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18 WHITNEY RIMEL, Judge
19 United States Bankruptcy Court
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PROOF OF SERVICE BY MAIL

STATE OF CALIFORNIA)
) ss.
COUNTY OF FRESNO)

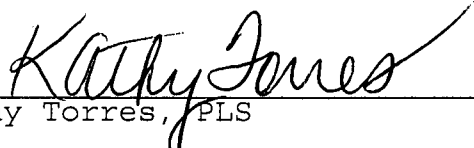
I am a citizen of the United States and a resident of the county aforesaid; I am over the age of eighteen years and not a party to the within above-entitled action; my business address is 2500 Tulare Street, Suite 2501, Fresno, California, 93721. On December 9, 2009, I served the within document on the interested parties in said action by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Fresno, California, addressed as follows:

Deborah Jane Morrow
21113 Main Street
Shade Gap, PA 17255

Patrick Kavanagh, Esq.
1331 L Street
Bakersfield, CA 93301

Office of the United States Trustee
2500 Tulare Street
Suite 1401
Fresno, California 93721

I certify (or declare), under penalty of perjury, that the foregoing is true and correct. Executed on December 9, 2009, at Fresno, California.


Kathy Torres, PLS